

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

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|-------------------------------|---|--------------------------|
| WESTINGHOUSE ELECTRIC COMPANY |) | |
| LLC, |) | |
| |) | |
| Plaintiff, |) | Civil No. 13-1124 |
| |) | Judge Nora Barry Fischer |
| v. |) | |
| |) | |
| ZETEC, INC., |) | |
| |) | |
| Defendant. |) | |

ORDER OF COURT

AND NOW, this 3rd day of March, 2014, upon consideration of Plaintiff's Motion for Default Judgment against Zetec, Inc., (Docket No. [28]), Defendant's Response, (Docket No. [34]), and Plaintiff's Reply, (Docket No. [35]); the parties' positions at the Motion Hearing held on February 13, 2014, (Docket No. [32]); and in light of the Defendant's Motion to Stay Litigation Pending Inter Partes Review of U.S. Patent No. 6,823,269, (Docket No. [19]),

IT IS HEREBY ORDERED that Plaintiff's Motion for Default Judgment [28] is DENIED, as it is procedurally defective in that Plaintiff has not requested entry of default before moving for default judgment under Federal Rule of Civil Procedure 55. Rule 55 requires a two-step process before a default judgment can be obtained against a defendant. *See Husain v. Casino Control Comm'n*, 265 F. App'x 130, 133 (3d Cir. 2008) ("[E]ntry of default by the Clerk under Federal Rule of Civil Procedure 55(a) constitutes a general prerequisite for a subsequent default judgment under Rule 55(b)." (citing 10A CHARLES ALAN WRIGHT, ARTHUR R. MILLER, MARY KAY KANE, FEDERAL PRACTICE AND PROCEDURE § 2682 (2007) ("Prior to obtaining a default judgment under either Rule 55(b)(1) or Rule 55(b)(2), there must be an entry of default as provided by Rule 55(a)." (footnote omitted))). Here, it is undisputed that no default was ever

entered by the Clerk against Defendant; therefore, Plaintiff's Motion for Default Judgment is denied. *Id.*

IT IS FURTHER ORDERED that Defendant shall file an Answer to the Amended Complaint within fourteen (14) days of this Order, i.e., **March 17, 2014**.

s/Nora Barry Fischer
Nora Barry Fischer
United States District Judge

cc/ecf: All counsel of record.